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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/592,019	07/09/2007	Vanni Zacche	BUG7-46160	6999
86378	7590	07/12/2011		
Pearne & Gordon LLP 1801 East 9th Street Suite 1200 Cleveland, OH 44114-3108			EXAMINER MAZUMDAR, SONYA	
			ART UNIT 1745	PAPER NUMBER
			NOTIFICATION DATE 07/12/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/592,019

Applicant(s)

ZACCHE ET AL.

Examiner

SONYA MAZUMDAR

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2010 and 11 March 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6 and 8-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 8-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/11/2011</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 11, 2011 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1-2, and 4-6 have been considered but, in light of amendments, are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 teaches "a drum around which the tubular label is formed" (in lines 2 and 3) and "a tubular label winding drum" (in line 7). It is unclear, by the way the claim is written, as to whether these two elements refer to the same feature or are different elements.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eder (US 4,594,123) in view of Fuji (JP 49134488).

With respect to claims 1 and 2, Eder teaches a device for positioning a tubular label at a pre-established height from a bottle bottom in a rotating labeling machine of a type equipped with:

- a drum (7), beneath where a tubular label (2) is formed on the bottle (1) and adapted to support the bottle on an upper base, where the drum allowing some vertical translation, with assistance from vertically reciprocable bells (10), in order to take the bottle inside the tubular label (column 3, lines 18-63; Figure 3),
- the drum provides lugs (i.e. stopper members) (27) placed in a semi-circle at a height from the bottle bottom on the upper base of the drum, when the bottle is housed on the drum (Figures 1 and 4), the semi-circle diameter having allowing precise fitting of the bottle.

Eder does not teach the claimed configuration of the stopper members.

However, it would have been obvious for one having ordinary skill in the art to do so, to adhere labels on containers of all sizes, as Fuji teaches providing stopper members (3) comprising a plurality of small vertical walls arranged in a ring pattern on a collar (1), adapted to be secured by screws (4) to the upper base, the small vertical walls elastically adhering, and thus allowing flexibility, on the top to the external surface of the bottle to create a stop for the lower label edge (11) (page 2; Figures 1-9).

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eder ('123) in view of Fuji et al., as applied to claim 1 above, and further in view of Eder (US 5,464,495).

The teachings of claim 1 are as described above.

Eder ('123) does not teach supplying hot air jets from when it is labeled to a conveyor during heat-shrinking (Applicant's specification: page 3, line 23 – page 4, line 2). However, it would have been obvious for one having ordinary skill in the art to do so to assist in adhering a label, as Eder ('495) teaches supplying hot air through nozzles (67, 68, 69) during heat shrinking labels to bottles (1) while rotating on a star turntable (61) (column 12, line 41 – column 13, line 9; Figures 13-15).

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eder ('123) in view of Fuji et al. and Eder (US '495), as applied to claim 4 above, and further in view of Dullinger (US 3,784,438).

The teachings of claim 1 are as described above.

Eder ('123) in view of Fuji et al. and Eder (US '495) does not retaining bottles in position on a star conveyor with elastic members. However, it would have been obvious for one having ordinary skill in the art to do so, as Dullinger teaches providing rubber padding to allow conformance and engagement of the bottles in the conveyor (abstract; column 1, lines 55-57; column 3, lines 32-35).

11. Claims 6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eder (US 4,594,123) in view of Fuji (JP 49134488).

Eder teaches a device for positioning a tubular label at a pre-established height from a bottle bottom in a rotating labeling machine of a type equipped with:

- a drum (7), beneath where a tubular label (2) is formed on the bottle (1) and adapted to support the bottle on an upper base, where the drum allowing some

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- vertical translation, with assistance from vertically reciprocable bells (10), in order to take the bottle inside the tubular label (column 3, lines 18-63; Figure 3),
- the drum provides lugs (i.e. stopper members) (27) placed in a semi-circle at a height from the bottle bottom on the upper base of the drum, when the bottle is housed on the drum (Figures 1 and 4), the semi-circle diameter having allowing precise fitting of the bottle.

Eder does not teach the claimed configuration of the stopper members.

However, it would have been obvious for one having ordinary skill in the art to do so, to adhere labels on containers of all sizes, as Fuji teaches providing stopper members (3) comprising a plurality of small vertical walls arranged in a ring pattern on a collar (1), adapted to be secured by screws (4) to the upper base, the small vertical walls elastically adhering, and thus allowing flexibility, on the top to the external surface of the bottle to create a stop for the lower label edge (11) (page 2; Figures 1-9).

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eder ('123) in view of Fuji et al., as applied to claim 8 above, and further in view of Eder (US 5,464,495).

The teachings of claim 8 are as described above.

Eder ('123) in view of Fuji et al. does not teach supplying hot air jets from when it is labeled to a conveyor during heat-shrinking (Applicant's specification: page 3, line 23 – page 4, line 2). However, it would have been obvious for one having ordinary skill in the art to do so to assist in adhering a label, as Eder ('495) teaches supplying hot air

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through nozzles (67, 68, 69) during heat shrinking labels to bottles (1) while rotating on a star turntable (61) (column 12, line 41 – column 13, line 9; Figures 13-15).

13. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eder ('123) in view of Fuji et al. and Eder (US '495), as applied to claim 10 above, and further in view of Dullinger (US 3,784,438).

The teachings of claim 10 are as described above.

Eder ('123) in view of Fuji et al. and Eder (US '495) does not retaining bottles in position on a star conveyor with elastic members. However, it would have been obvious for one having ordinary skill in the art to do so, as Dullinger teaches providing rubber padding to allow conformance and engagement of the bottles in the conveyor (abstract; column 1, lines 55-57; column 3, lines 32-35).

14. Claims 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eder (US 4,594,123) in view of Fuji (JP 49134488).

With respect to claims 1 and 2, Eder teaches a device for positioning a tubular label at a pre-established height from a bottle bottom in a rotating labeling machine of a type equipped with:

- a drum (7), beneath where a tubular label (2) is formed on the bottle (1) and adapted to support the bottle on an upper base, where the drum allowing some vertical translation, with assistance from vertically reciprocable bells (10), in order to take the bottle inside the tubular label (column 3, lines 18-63; Figure 3),
- the drum provides lugs (i.e. stopper members) (27) placed in a semi-circle at a height from the bottle bottom on the upper base of the drum, when the bottle is

housed on the drum (Figures 1 and 4), the semi-circle diameter having allowing precise fitting of the bottle.

Eder does not teach the claimed configuration of the stopper members to guarantee elastic adaptation to variable bottle surfaces. However, it would have been obvious for one having ordinary skill in the art to do so, to adhere labels on containers of all sizes, as Eder teaches providing vertical pins (27) and screws that support a semi-circle bracket (34) on which gears (i.e. limit switches) (33) are radially secured, said vertical pins being able to be fixed to the upper base of the winding drum or to a bracket equipped with rotation and vertical movements (column 5, lines 22-44; column 7, lines 29-35).

Furthermore, Fuji teaches providing stopper members (3) comprising a plurality of small vertical walls arranged in a ring pattern on a collar (1), adapted to be secured by screws (4) to the upper base, the small vertical walls elastically adhering, and thus allowing flexibility, on the top to the external surface of the bottle to create a stop for the lower label edge (11) (page 2; Figures 1-9).

15. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eder ('123) in view of Fuji et al., as applied to claim 13 above, and further in view of Eder (US 5,464,495).

The teachings of claim 13 are as described above.

Eder ('123) in view of Fuji et al. does not teach supplying hot air jets from when it is labeled to a conveyor during heat-shrinking (Applicant's specification: page 3, line 23 – page 4, line 2). However, it would have been obvious for one having ordinary skill in

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the art to do so to assist in adhering a label, as Eder ('495) teaches supplying hot air through nozzles (67, 68, 69) during heat shrinking labels to bottles (1) while rotating on a star turntable (61) (column 12, line 41 – column 13, line 9; Figures 13-15).

16. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eder ('123) in view of Fuji et al. and Eder (US '495), as applied to claim 14 above, and further in view of Dullinger (US 3,784,438).

The teachings of claim 14 are as described above.

Eder ('123) in view of Fuji et al. and Eder (US '495) does not retaining bottles in position on a star conveyor with elastic members. However, it would have been obvious for one having ordinary skill in the art to do so, as Dullinger teaches providing rubber padding to allow conformance and engagement of the bottles in the conveyor (abstract; column 1, lines 55-57; column 3, lines 32-35).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SONYA MAZUMDAR whose telephone number is (571)272-6019. The examiner can normally be reached on Monday-Friday, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Philip Tucker can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sonya Mazumdar/
Patent Examiner, Art Unit 1745